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OFFICE OF PETITIONS

In re Application of :
Mohri :
Application No. 09/910,093 : ON PETITION
Filed: July 20, 2001 :
Attorney Docket No. 2001-0226 :

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181(a), filed February 2, 2012.

The petition is **dismissed**.

This application was held abandoned January 5, 2006, after no reply was received to the Notice of Allowance and Issue Fee Due mailed October 4, 2005. The notice set forth a statutory period for reply of three month from its mailing date. No response was received within the allowable period and the application became abandoned on January 5, 2006. A Notice of Abandonment was mailed October 3, 2006. The instant petition was filed on February 2, 2012. Petitioner maintains that the notice of October 4, 2005, was never received.

When, as in this case petitioner is arguing that an Office communication was not received, petitioner must establish non-receipt of the Office communication in accordance with section 711.03(c) of the *Manual of Patent Examining Procedure* that requires the following:

To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.

A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of

the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.<

Petitioner has not made the evidentiary showing specified above. The petition is dismissed accordingly. The renewed petition must be accompanied by a copy of petitioner's **master docket record**, or other adequate evidence to support petitioner's contention that the Notice of October 4, 2 005, was not received¹. If a master docket does not exist, the renewed petition should indicate such.

It is noted that petitioner requested that the instant petition under 37 CFR 1.181 be treated as petition under 37 CFR 1.137(b) alternatively. However, the undersigned believes that petitioner may be able to meet the evidentiary burden of the petition under 37 CFR 1.181 to withdraw the holding of abandonment and wished to afford petitioner the opportunity to do so. If petitioner is not able to provide the relevant master docket record, petitioner may re-file the petition under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
United States Patent and Trademark Office
Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

¹ Petitioner must provide a copy of the relevant docket record even where, as in this case, it is apparent from the file record that the notice was not sent to the correct address.